

REMARKS/ARGUMENTS

Favorable reconsideration of this application, as presently amended and in light of the following discussion, is respectfully requested.

Claims 1-24 are pending in the present application, Claims 17 and 22 having been amended.

In the outstanding Office Action, the Abstract was objected to; Claims 17-24 were rejected under 35 U.S.C. §101; Claims 1-8 were rejected under the non-statutory obviousness-type double patenting as unpatentable over Claims 1-6 of U.S. Patent No. 6,678,867; and Claims 1-24 were rejected under 35 U.S.C. §103(a) as unpatentable over Kutay et al. (U.S. Patent No. 2002/0026461, hereinafter Kutay).

Initially, it is noted that the reference cited on line AW on the PTO Form 1449 submitted with the Information Disclosure Statement filed on March 8, 2006 was not initialed as having been considered by the Examiner. It is respectfully requested that the reference cited on line AW be considered on the record, and that the Examiner send the undersigned an initialed PTO-1449 form to that effect.

With respect to the objection to the Abstract, a new Abstract is provided with the present Amendment. Accordingly, Applicants respectfully submit that this objection is overcome.

As for the rejection of Claims 17-24 under 35 U.S.C. § 101, that rejection is respectfully traversed. Claim 17, from which Claims 18-24 depend, has been amended to recite "A computer program product storing instructions for execution on a computer system, which when executed by the computer system, causes the computer system to perform a method...." Accordingly, it is respectfully requested that this rejection be withdrawn.

MPEP § 2106 discusses statutory subject matter in relation to data structures of a computer readable medium. Particularly, MPEP § 2106 provides,

a claimed computer-readable medium encoded with a data structure defines structural and functional interrelationships between the data structure and the computer software and hardware components which permit the data structure's functionality to be realized, and is thus statutory.

Thus, based on the clear language of this section, Claims 17-24 are statutory as they define a functionality of which is realized based on the interrelationship of the structure to the medium and recited hardware components.

Further, should the Examiner disagree with the above passage, MPEP § 2106 also states that,

Whenever practicable, Office personnel should indicate how rejections may be overcome and how problems may be resolved. A failure to follow this approach can lead to unnecessary delays in the prosecution of the application.

Applicants respectfully submit, as noted above, that the rejection under 35 U.S.C. § 101 should be withdrawn. However, if the rejection under U.S.C. § 101 is to be maintained, applicants respectfully request that the Examiner provide an explanation of the rejection in view of the guidelines of MPEP § 2106.

With respect to the rejections based on non-statutory double patenting, Applicants respectfully submit that Claims 1-8 are patentably distinct from Claims 1-6 of U.S. Patent No. 6,678,867.

To expedite progress toward allowance, a Terminal Disclaimer is filed herewith. Thus, Applicant submits the outstanding rejections of the claims have been overcome.

The filing of a Terminal Disclaimer to obviate a rejection based on nonstatutory double patenting is not an admission of the propriety of the rejection. The "filing of a Terminal Disclaimer simply serves the statutory function of removing the rejection of double patenting, and raises neither a presumption nor estoppel on the merits of the rejection." Quad Environmental Technologies Corp. v. Union Sanitary District, 946 F.2d 870, 20 U.S.P.Q.2d

1392 (Fed. Cir. 1991). Accordingly, Applicants filing of the attached disclaimer is provided for facilitating a timely resolution to prosecution only, and should not be interpreted as an admission as to the merits of the obviated rejection.

With respect to the rejection of Claim 1-24 are unpatentable over Kutay, Applicants respectfully traverse the rejection because Kutay is not prior art.

The outstanding Office Action, at page 7, states that Kutay has an effective filing date of June 5, 2000. The present Application is continuation of Application Serial No. 09/899,108 (now U.S. Patent No. 6,678,867), filed July 6, 2001, which is a continuation of Application Serial No. 08/997,705 (now U.S. Patent No. 6,279,015), filed December 23, 1997. Thus, the effective filing date of the present Application is December 23, 1997, which is earlier than the effective filing date of Kutay.

Accordingly, Applicants respectfully request that the outstanding grounds of rejection be withdrawn.

Consequently, in light of the above discussion and in view of the present amendment, the present application is believed to be in condition for allowance and an early and favorable action to that effect is respectfully requested.

Respectfully submitted,

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